

## Tarion Warranty Corporation Independent Review – Interim Report Released

In a [prior blog post](#) we announced that the Government of Ontario was conducting an independent review of the Tarion Warranty Corporation and the Ontario New Home Warranties Plan Act (“ONHWPA”). After consultations and written submissions from homeowners and industry stakeholders and professionals, and reviewing home warranty programs in other provinces and internationally, Justice Cunningham has now released his [interim report](#).

The report noted that one of the biggest changes in the home building industry since the inception of the ONHWPA 40 years ago is the fact that more than 50% of new homes are condominium units.

The interim report focuses on the concerns raised in Justice Cunningham’s review and the possible options to address those concerns.

Some of the major concerns are set out below.

**Condominiums as Distinct from Other New Homes** – Due to the unique requirements of condominiums, should there be a separate section in the legislation that specifically deals with condominiums and is aligned with the Condominium Act?

**Tarion’s Role** – Currently Tarion performs the roles of regulator, warranty provider, adjudicator and rule maker. Questions were raised as to whether this multiplicity of roles results in a conflict of interest and if this is the most beneficial way for these services to be provided. Questions were also raised as to whether Tarion should continue to be the sole provider of the home warranties or if other insurers should also be permitted to provide this coverage.

**Dispute Resolution Process** – Timelines to make claims were perceived as too short. In the case of condominiums, the common elements are often not completed during the first year, but the claims timelines start to run from the date of registration of the condominium declaration. In addition, some condominium corporations are hampered in their performance audit as a result of delays by the developer in delivering all plans, specifications and drawings necessary to conduct the performance audit. Concerns were also raised about the fact that currently homeowners and condominium boards have the onus of proving the defect and providing evidence to substantiate the claim.

**Consumer Education** – There is a need to improve communications to homeowners and provide more information about the home warranty program early in the home buying process.

**Warranty Coverage and Duration** – Concerns were raised as to whether the coverage amounts and warranty duration (particularly for water penetration and major structural defects) were sufficient.

**Builder Regulation** – Concerns were raised about the accuracy and completeness of the Ontario Builder directory, claims that it was misleading consumers about a builder’s performance and that it was challenging to find information about builders operating under several names.

**Tarion Board Governance** – There is a perception that the Tarion board is dominated by builders and thus favours builders. Need for more diversity on the Tarion board to include industry professionals.

**Accountability, Transparency and Oversight** – Concerns were expressed about the need for more independence of the Tarion ombudsman and more independent government oversight. Questions were raised about whether Tarion should have the unilateral right to implement regulations.

**Lack of Clear Definitions** – Defined terms need to be clarified to reflect changes in building practices over the last 40 years.

[Criticism has been expressed in the media](#), as the interim report does not address the adequacy of the deposit protection provided under the ONHWPA. Currently, deposits up to \$20,000 on condominiums and up to \$40,000 on freehold homes are protected. These amounts have not been increased even though home prices have been soaring and new home builders are requiring deposits of much larger amounts.

Justice Cunningham’s final report and recommendations will be provided to the Government of Ontario in the fall of 2016. You can provide input on the interim report by e-mail to [TarionReview@ontario.ca](mailto:TarionReview@ontario.ca) by October 14, 2016.